



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 18, 2003

Mr. Thomas F. Best
General Counsel
Texas Commission on Alcohol & Drug
P. O. Box 80529
Austin, Texas 78708-0529

OR2003-4194

Dear Mr. Best:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183011.

The Texas Commission on Alcohol and Drug Abuse (the "commission") received a request for information relating to litigation and/or complaints against a named facility. You state that some responsive information will be released to the requestor. You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 464.010 of the Health and Safety Code requires that a facility providing alcohol and drug abuse treatment shall report alleged abuse or neglect of a client of the facility to the commission. Section 464.010(e) provides:

(e) All records made by the commission during its investigation of alleged abuse or neglect are confidential and may not be released except that the release may be made:

- (1) on court order;
- (2) on written request and consent of the person under investigation or that person's authorized attorney; or
- (3) as provided by Section 464.011.

Under section 464.011, the commission may make its licensing and investigatory records that identify a client available to a state or federal agency or law enforcement authority on request and for official purposes. Health & Safety Code § 464.011. In this case, you advise that the commission received complaints that the facility at issue had abused or neglected one or more clients of the facility, and that in some instances, the facility submitted a self-reported incident report based on their internal investigation. You further state that the submitted documents consist of summaries of the investigative complaints and incident reports. Based on your representations and our review, we determine that the submitted documents are within the scope of section 464.010(e), and that none of the release provisions found in sections 464.010 and 464.011 are applicable here. Consequently, we conclude that the commission must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 464.010(e) of the Health and Safety Code.

You also ask for specific guidance regarding the applicability of section 464.010 after an investigation has been closed. We note that section 464.010 refers to records made *during* an investigation. Health & Safety Code § 464.010(e). This section does not limit the time period during which such records must be withheld. So long as a record was made during an investigation, and the investigation is related to alleged abuse or neglect, then such records are confidential and must not be released except in limited circumstances, further defined in the statute. Health & Safety Code § 464.010(e)(1), (2), (3).

Finally, you ask for a previous determination allowing the commission to withhold the general category of information at issue in the present request. We decline to issue such a determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us. Therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 183011

Enc. Submitted documents

c: Ms. Martha Gustavsen
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(w/o enclosures)